IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

WP(C).No. 18175 of 2005(L)

PETITIONER:

P.P.KURIAN, MUPPATHIL HOUSE,
KUMMANAM MURI, CHENGALAM VILLAGE,
KOTTAYAM TALUK, KOTTAYAM.

BY ADV. SRI.JACOB P.ALEX.

RESPONDENTS:

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1. **MATHAI STEPHANOES,**
   NEDUMALA KIZHAKKETHIL CHARUVIL HOUSE,
   KARUVATTA MURI, PERINGANADU VILLAGE, ADOOR TALUK,
   PATHANAMTHITTA.

2. **TUSHAR M KARMARKAR,**
   38, MOHAMMAED MANSION, GOKHALE ROAD (SOUTH),
   DADAR, MUMBAI.

3. **DOMINIC FERNANDEZ, MHB COLONY,**
   8/581, GORAL ROAD, BORIVALI WEST,
   MUMBAI.

BY ADV. SRI.KURIAN GEORGE KANNAMTHANAM FOR R1.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.18175/2005:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE PLAINT IN O.S. 305/2003.

EXT.P.2: COPY OF THE I.A. NO. 999/2005 IN O.S. 305/2003.

EXT.P.3: COPY OF THE ORDER DTD. 02/06/2005 IN I.A. NO. 999/2005 IN O.S. 305/2003 OF THE MUNSIFF'S COURT, ADOOR.

//TRUE COPY//

prv.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 18175 OF 2005

Dated this the 2nd day of July, 2007

JUDGMENT

An application for amendment of a suit simpliciter for injunction as one for recovery of possession on the strength of title deed made on the allegation that the respondent defendants trespassed into the property during the pendency of the suit and that too on the strength of an injunction order which had been obtained by them in another suit filed by them has been dismissed by the learned Munsiff under Ext.P3.

2. Heard the submissions of Sri.Jacob P. Alex, learned counsel for the petitioner and those of Sri.Thomas George, learned counsel for the respondent. Mr.Thomas George, learned counsel for the respondent would defend Ext.P3 order with all the persuasive prowess at his command. The submission of Mr.Chacko notwithstanding, I am of the view that the learned Munsiff should not have dismissed the application for amendment. No prejudice will be caused to the respondents by the amendment. Of course some inconvenience will be caused to the respondents.

3. Having regard to the principles settled by judicial precedents regarding exercise of power under Order VI Rule 17, the learned Munsiff ought to have allowed the application for amendment. The trial has

concededly not started and it was not even necessary that the petitioner gave explanation as to why he has not sought for amendment earlier since the proviso to Order VI Rule 17 does not apply.

By setting aside Ext.P3, I allow IA No.999 of 2005, but only on terms. Considering the stakes involved in the suit and the inconvenience which will be caused to the respondent-defendant, I am of the view that a total amount of Rs.1,500 will be adequate cost. Accordingly, IA No.999 of 2005 will stand allowed on condition that the petitioner pays a sum of Rs.1,000/- by way of cost to the respondents either directly or through their counsel in this court and Rs.500/- to the High Court Legal Services Committee. The cost shall be paid within a period of three weeks from today. If the payment is made, Ext.P3 will become set aside and thereupon the court below will permit the respondents to file additional written statement, if any, and will formulate additional issues on the contentions therein. But if cost is not paid within the aforesaid time limit the impugned order will stand confirmed and the Writ Petition will stand dismissed.

The Writ Petition is disposed of as above.

PIUS C. KURIAKOSE, JUDGE

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